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IN THE

Supreme Court of the United States

October Term, 1962

No. 1015

SINCLAIR REFINING COMPANY,

Petitioner,

v.

VILLAIN & FASSIO, INTERNAZIONALE DI GENOVA SOCIETA RIUNITE DI NAVIGAZIONE, S.p.A.,

Respondent.

PETITIONER'S REPLY BRIEF

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Respondent's counsel err in saying:

> "Neither decision can fairly be read as permitting a 'choice' between adherence to the signals prescribed by the International Rules and those prescribed by the Inland Rules." (Respondent's brief, p. 10).

To the contrary, the District Court said:

> "The question of whether the FASSIO was at fault in sounding the R signal can be broken down into two parts: (1) Was the master justified in sounding any supplementary signal and (2) was his choice of the R signal improper?" (169a).
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> "Knight recognizes the availability of a danger signal as a supplementary signal • • •" (172a).

And that theory of "choice" of signals was adopted by the Court of Appeals when it amended its opinion after petition for rehearing. The opinion now reads:

> "The danger signal might have indicated that he was himself under way, although its use in such circumstances could be sustained" (Appendix to peti-

tion, p. 19; Court of Appeals opinion since reported at 313 F. 2d 722).

Despite their disavowal, respondent's counsel repeatedly and mistakenly advocate substituting "choice" for uniformity in the Inland Rules: (1) They argue that use of any signal "not inherently confusing" would not be unlawful (Respondent's brief, p. 2); (2) They attack the fictitious premise that the "R" signal "was comparatively unknown and therefore not an appropriate choice of a supplementary signal" (Respondent's brief, p. 9); (3) They even say that whether the danger signal "may also have been properly used by an anchored vessel in fog is quite beside the point" (Respondent's brief, p. 7). The phrase last quoted follows the wholly mistaken assertion that:

> "The 'danger' signal advocated by petitioner as the only permissible 'departure' from the Inland Rules is itself expressly forbidden by such rules except in the case of vessels both of which are maneuvering in sight of each other. Art. 18, Rule IX (33 U. S. C. 203)". [Respondent's brief, p. 7].

Far from being a departure from or forbidden by the Inland Rules, the danger signal is mandatory thereunder for a vessel at anchor in fog when threatened by maneuvers of something beyond the range of her fog bell (Petition, p. 10). The danger signal is a fog signal as well as a clear weather signal and is not a signal for "meeting, passing or overtaking", those being the signals forbidden "except when steamers are in sight of each other" (33 U. S. C. 203; Respondent's Appendix A, p. 12).

The disrupting effect of substituting "choice" for uniformity, thus shows through opposing counsel's attempt to clutter the issue.

Respectfully submitted,

EUGENE UNDERWOOD,
Counsel for Petitioner.

May 3, 1963.